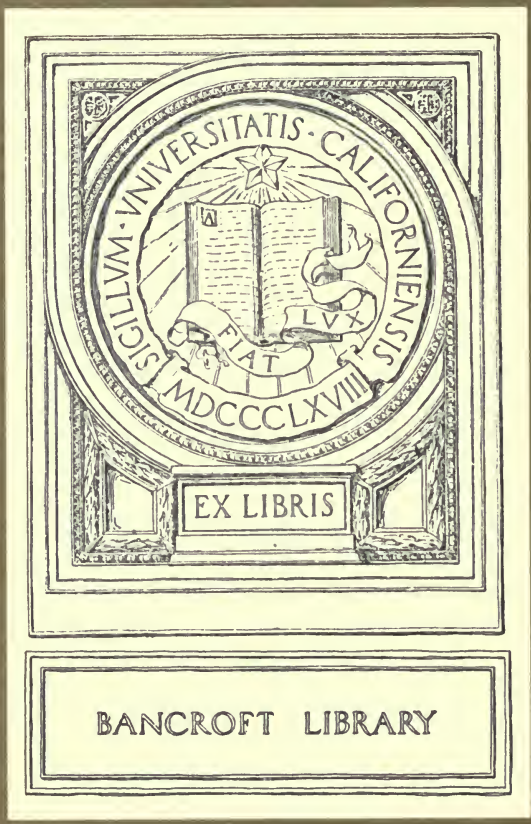
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Hon. Niles Searls,

Chairman Committee on Corporations in Senate.

Sir: The Senate Committee on Corporations, of which you are chairman, having decided to grant a hearing to the Commissioners of Transportation on the railroad bills now under consideration, I address some observations on them to yourself in this form, in the hope that some of the members, individually, may find the necessary leisure to consider them.

These bills are five in number, viz: the four prepared by the Commissioners of Transportation, and which were introduced in the Senate some weeks since, and Assembly bill No. 541. This last having passed the lower house, will, doubtless, be taken as the basis of any legislation to be adopted, and on it, therefore, the following observations are offered. It has been made up by copying the act of April 3, 1876, omitting provisions tending to an efficient inspection of the business of the corporations, and adding sundry sections from the bills recommended by the Commissioners. Of its forty-one enactive sections (I omit the repealing and the "take effect immediately" sections from the count), thirty-seven are of

the character indicated, and three only are original (Sections 17 and 20, of Chapter I, and Section 9, of Chapter II), though some trivial changes are introduced in the copied sections. Its faults being mainly of omission, I shall deal with those first, and with all possible brevity.

I. Conspicuous is the omission to provide that the new Commissioner of Transportation shall be deemed the legal successor of the Board legislated out of office. You are aware that several actions of mandamus were brought to compel railroad companies to afford statistical information demanded by the present Commissioners, and which they had refused to furnish. These actions are pending in the Supreme Court, on appeal from judgments rendered below, in favor of the State. They were set for argument for December 3d last, but postponed, and finally, by consent, set down for hearing on March 4th. On that day they were pressed by the counsel for the Commissioners, but postponed a week, at the instance of the railroad companies. On Monday, the 11th inst., when they again came up, the same counsel applied to continue them for the term, on the ground that one branch of the Legislature had passed an act abolishing the Commission, and the other would probably concur! The Court, thus called upon to discount the action of the Senate, did not hesitate to do so, and postponed the cases for the term. But that serious public business is con-

cerned, the comic nature of this proceeding would not fail to attract attention.

The information demanded in these suits was deemed by the Commissioners highly material to guide legislation. The District Court was of the same opinion, and adjudged that it should be furnished. The effect of creating a new commission and destroying the old, without provision for legal succession, will be to abandon these suits wherein judgments have already been rendered in favor of the State, and practically to declare it preferable to legislate in ignorance of material facts than with knowledge of them. To avoid this absurd result, it will only be necessary to amend the first section of the bill so as to read "Hereafter there shall be but one Commissioner of Transportation, who shall be the legal successor of the present Board of Commissioners of Transportation, and who shall possess the powers and discharge the duties herein imposed and described.

II. Section 8 of Chapter I of the bill enumerates the details of information required to be furnished by railroad companies in their annual reports. It is a substitute for Section 3 of Commissioners' bill No. I. The details are in each case taken from the same source, viz: the form of report adopted by the Massachusetts Commission. The difference between them is just this; that whereas the Massachusetts form is not enacted in a statute, but is contained in a blank prepared by the Commis-

sioners, is accompanied by notes explanatory of its intent, and, if not properly understood, is subject to further oral explanation by the authority which issued it, these bills put the form itself into the statute. In Commissioners' bill No. 1, the language was, wherever necessary, changed from that appropriate to a blank form, which is to be interpreted by the officer who prepared it, to that appropriate to a statute, which must be construed by a Court of law. In Assembly bill No. 541 this precaution has been wholly omitted, and the result has been to produce an enactment, a large part of which a Court would be compelled to pronounce unintelligible and incapable of any legal interpretation. For examples of this see Section 8, lines 52, 63, 64, 65, 66, 69, 88, 89, 90, 91, 92, 93, 118, 135, 137, 141, 181, 201, and many more which might be cited, as destitute of the legal signification they were intended to bear. What sort of a general balance sheet can possibly be constructed out of the items under that head? Lines 227 to 237. What is the legal meaning of "freight cars, including coal, on a basis of eight wheels" (line 317)? What of the term "balance of mileage and passenger cars" (line 168)? What of "damages and gratuities freight" (line 172)? These and like inquiries without number, which might be put illustrate the utter worthlessness of the section, in its present form, to elicit the information which its author must be presumed to have deemed desirable.

These and other omissions equally notable have arisen from copying with servility, a document which it is but charitable to suppose was not understood. The Massachusetts form is good, but the scope and details of its inquiries are adapted to the railroads of that State, which are of moderate length, extend through a country of reasonably even topography and density of population, and are at various points connected with, and depend for their business on other roads out of the State. To adapt that form to our State, regard must be had to the difference in the character of our great roads. These have been made up by the consolidation of several different companies, and consist of several different roads, each having its proper and separate business. The topography of the country through which they extend is extremely diversified, and but one of them has any connection without the State. Statistics of the operations of these roads which mingle the business of their several branches and subdivisions into one rude and undigested mass—as in the section under consideration—are simply worthless. To give them value they should be called for and furnished separately as to each separate branch or subdivision of each road, as is done in Section 3 of Commissioners' bill No. 1.

The remedy is to amend Section 8 of Chapter I, by substituting the last mentioned section for it.

III. Section 9 of Chapter I gives the commissioner power to scrutinize the books, &c., of

railroad companies and examine their officers on oath. Attention having been called in our report to the ineffiiciency of this provision, unaccompanied by process to compel the attendance of witnesses and the production of books and papers, it would seem superfluous here to do more than refer to it. If the omission of this necessary power was the result of inadvertence in drawing the section, the defect can be supplied by substituting for it section 5 of Commissioners' bill No. 1.

IV. Attention was also called to the necessity of making false swearing in the case of railroad reports or examinations punishable as perjury. By the provisions of the Criminal Code such is not the case. To remedy this defect section 36 of Commissioners bill No. 1 was prepared and should be added.

V. A more remarkable omission in the bill as printed for the use of the Senate, occurs at the end of section 10 of chapter I. This section (according to the proceedings of the Assembly as reported in the *Record-Union)* was introduced as an amendment, on motion of Mr. Tuttle, of Sonoma, and as then published it contained the following additional words, viz : "*The Governor shall cause to be printed for distribution 2500 copies of said report.*" These important words have since disappeared from the section in the printed bill now on Senators' files. How, by whom, or by

what authority the change has been made, I know not, but its importance will readily be perceived. A leading object of collecting these railroad statistics, is, by giving them extended publicity, to draw attention to defects and abuses and elicit comments and remedial suggestions. If the information, when gathered, is to be buried in manuscript in the office of the Commissioner, it can elicit no criticism save from that officer. Published and scattered abroad, it is examined and commented on by hundreds of experts throughout the country. Every public-spirited citizen may become a voluntary aid to the Commissioner. From what has been said it will appear that if this bill No. 541 is to remain unchanged in the particulars noted, its title might appropriately be amended so as to read, "An Act to limit information of the operations of railroad companies in this State to what they may see fit to furnish, and to suppress it when obtained!"

VI. The bill incorporates all the police regulations proposed by the Commissioners, favorable to railroad companies, with the remedies appropriate to them. It also includes a few of those which might operate as restraints upon them, but in respect to the latter omits to provide remedies. This omission (doubtless inadvertent) might be supplied by adding section 35 of Commissioners Bill No. 1, and section 3 of Bill No. 2 at appropriate places.

VII. An error of some importance occurs in section 7 of chapter 1 of the bill. The tariffs required to be filed with the Commissioner and County Clerks (line 9) are those which were "*lawfully in force*" on January 1st, 1878. But those established as the maximum (line 17) are such as were *in actual use* on the same date. By reference to paragraph 18, (p. 9) of the Commissioner's report it will be seen that those actually in use between the anchorage at Wilmington and Los Angeles are two and a half times greater than those lawfully in force between the same points. If it is intended to legalize thisadvance in rates, "it were an honest action to say so" plainly. If not, the mistake should be corrected.

VIII. Many other omissions might be pointed out of provisions which "plain people" would deem salutary, such as those to be found in sections 20, 23, 26, 27, 32, 34, 40 and 41 of Commissioners Bill No. 1, but as these were before the Assembly when considering the bill, and have not been inserted, it must be presumed they were not deemed desirable; hence I omit all reference to them, and come to the new sections in that under examination. Section 9 of chapter II., which authorizes any person to complain to the Commissioner of violations of law by railroad companies, and requires him to investigate the case, is very well, and might be of some value if any power were given him to remedy abuses when discovered. In the absence

of such provision it becomes simply what Mr. Benton called a "stump speech in the belly of the bill," harmless and useless.

The other new provision is contained in section 17 of chapter I. and purports to authorize the Commissioner on complaint made to him of the rates of transportation established by any railroad company to make such reduction thereof as may be just. If this section means only to authorize a reduction in any particular bill of charges, to the rates established by law (an interpretation which, though strained, might perhaps be given to it, "*ut res majus valeat*") it is as harmless and will prove as ineffective as that last cited; but if, as its language imports, it is intended to confer on the Commissioner, power to establish tariffs of freight and fare such as he shall deem just, it may well be characterized as one of the most extraordinary provisions that ever found its way into a statute. Doubtless under existing decisions the Legislature can itself enact a tariff of freights and fares; but that any man, outside of Bedlam, should suppose that such transcendent power could be imparted to a subordinate executive officer, who has not even the power to summon a witness before him, passes belief. The author of the provision may be able to explain its intent; for my part I refrain from even conjecture on the subject, lest I should be drawn down to the low level, to which some, in discussing these bills have descended, of unwarranted imputa-

tion on the acts and motives of persons unknown to me, and who have no opportunity of reply.

IX. The only other new provision is that which gives to the Commissioner, the Attorney-General for his legal guide, and authorizes that officer to "take control of" the prosecution of any action or proceeding commenced by any district attorney under the act. This provision not only casts upon an already overburthened public officer new duties of great extent, but gives him a supervising power over the acts of the Commissioner, hardly consistent with the proper responsibility of the latter officer. He may, indeed, commence a prosecution, but unless the Attorney-General deems its continuance to be required by the public interest, he can discontinue it. All responsibility for such cases is, therefore, shifted from the Commissioner, whose business it is, to the attorney-General, whose duties are of a wholly different character. There may be propriety and good sense in this confusion of duties, but I confess myself unable to see it.

X. In concluding these observations, I solicit your attention, and that of all the members who may do me the honor to read this paper, to the fact that no attempt is made in the measure which has passed the House, to grapple with the question of excessive fares and freights, so long the subject of public complaint, and to a remedy for which a majority of the Legislature is said to be pledged. The

Commissioner's report points out the objections to statutory rates of charge, and expresses the belief that the object desired can best be accomplished by prescribing general principles of justice and equality, to which railroad tariffs shall conform, and leaving details to the operation of the natural laws of trade. The disfavor with which the work of the Commission has been received by the railroad companies, together with their refusal to state any facts or offer any argument, in opposition to the mode of regulation proposed, shows pretty clearly that the right method of reform has been discovered; one which without doing injustice to the companies, will relieve the public. Towards this desirable object the Commission presented two measures as alternatives (Commissioners' Bills Nos. 3 and 4.) The former prescribed a system complete in itself and which, when properly understood, appears just and reasonable, though its details may perhaps need amendment. In view, however, of the extent of the innovation; the peculiar present circumstances of some of our roads; the exceptionally unfavorable season of last year; the great outlay attending the construction of the Southern Pacific railroad to the Colorado river, and the legislation pending in Congress looking to another overland route, I can well understand that legislators should hesitate before undertaking so thorough a change at the present time. But it does not follow that because thorough reformation is premature a partial one should not be attempted. Commissioners' Bill No. 4 pre-

sents the other alternative. Its principle is simple, and if restricted in its operation to domestic crops, it would be a perfectly safe experiment, confer an inestimable benefit on the producers of the State, without injuring any of the railroads, and probably without even appreciably impairing their receipts. It proposes, briefly, the separation of terminal from movement charges; that the former be made uniform on like lots of like commodities, and the latter, to or from all points on navigable water be fixed at equal rates per mile. This measure (Assembly Bill No. 228) has never been acted on in the House, but rests in the womb of the Committee on Corporations of that body. If it be deemed, by any, too stringent, let it be amended by omitting the third and fourth sections and confining the second to the crops of the State, and it will still be a measure which, without doing the slightest injustice to the railroad companies, will give infinite relief to the distressed farmers of the valley of California. At present the companies, by their tariff, practically say to them, We will not transport your crops to market at Marysville, Sacramento or Stockton unless you pay us the full price of taking them all the way, on to San Francisco; nay, in addition, we insist on being paid for the further service, useless to you though it be, of raising them 500 feet perpendicularly in the air and letting them down again; for such is the grade over the Western Pacific road. The injustice of this discrimination is

so obvious that its defence has never, so far as I am aware, been attempted, and it appears to me indefensible.

I, therefore, suggest that as an additional amendment to Assembly Bill No. 541 you insert in the second chapter thereof the first and second sections of Commissioners' Bill No. 4, the latter being amended so as to read as follows :

SEC. 2. In all cases where a railroad reaches navigable water at more than one point, or reaches more than one city or town situate on navigable water, the company operating such road shall furnish transportation over it for the crops or products of this State, to any one of such points, towns, or cities, at the option of the party requiring the same, at the lowest rate per mile for movement charges, which shall be charged for like transportation over such road to or from any other such point, city, or town.

By the amendments I have suggested, Assembly bill No. 541 may be made a measure of substantial reform; in its present form it appears a burlesque on remedial legislation.

X. As we are continually referred, in the discussion of these railroad questions, to the experience of Massachusetts, and Mr. Adams' Oshkosh lecture is constantly quoted to prove that there is no remedy for railroad abuses, save public opinion, and that it is entirely effective for all purposes, I may be pardoned for adding a few words in reply. Massachusetts is a State destitute of navigable rivers. No competition with railroad transportation is there possible. The railroads there are owned

by various companies each having a numerous body of shareholders, who, mingling with and forming parts of society, are amenable to social influences and to public opinion. In these two respects, not to mention others almost equally important, our situation is directly the reverse. Our roads are owned by a very few individuals, to whom corporate organization is merely a convenient form of partnership. Public opinion, unless developed to a point which threatens legislative interference or civil commotion, has no necessary influence on them. Our State is traversed by two great navigable streams, and its coast for seven hundred miles is bathed by the waters of a placid sea, admitting competitive means of communication between all leading points. To prevent oppressive rates of transportation by railroads, we have but to require them to abstain from discriminating against localities. For my own part I would rather trust for relief to such a law alone, than to any legislative maximum, or other arbitrary restriction of trade; for such a law is demonstrably just, and once enacted, could never be repealed.

I am, sir, very respectfully,

Your Obedient Servant,

JOHN T. DOYLE,

Commissioner of Transportation.

San Francisco, March 18th, 1878.